

FILED
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OCTOBER 7, 2009

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

PAUL JEFFREY CONNALL,

Petitioner,

V.

RICK THALER, Director,
Texas Department of Criminal Justice,
Institutional Division,

Respondent.

2:09-CV-0230

REPORT AND RECOMMENDATION TO DISMISS
PETITION FOR A WRIT OF HABEAS CORPUS
FOR WANT OF PROSECUTION

On September 10, 2009, petitioner filed with this Court a form Petition for a Writ of Habeas Corpus by a Person in State Custody wherein he indicted he was challenging a disciplinary proceeding and asserting “civil and constitutional rights violations.” On September 14, 2009, petitioner was advised that his habeas petition contained claims which are properly raised under 42 U.S.C. § 1983 rather than by way of federal habeas corpus. Consequently, petitioner was ordered to file with this Court an Amended Petition for a Writ of Habeas Corpus utilizing an “amended” petition for a writ of habeas corpus form provided to him by this Court. Petitioner was instructed to include only claims appropriate for federal habeas corpus relief in this amended petition.

Petitioner was also advised that if he wished to assert claims of civil rights violations and seek monetary damages, he could do so by filing a Civil Rights Complaint, utilizing the form required by the Northern District of Texas. Petitioner was specifically instructed not to include civil rights allegations in any amended habeas petition.

On September 23, 2009, petitioner submitted to this Court a Civil Rights Complaint

alleging the civil and constitutional rights violations alleged in his original habeas corpus petition. On September 24, 2009, petitioner's complaint was returned to him by the United States District Clerk as a result of sanctions imposed by various courts within the Fifth Circuit.

To date, petitioner has failed to file an amended habeas corpus petition asserting only claims which challenge the fact or duration of his confinement. By correspondence dated September 27, 2009, petitioner inquired of the Court as to whether it had received his "refiling of 2254 petition as a 42 U.S.C. 1983 lawsuit." Due to his filing of the civil rights complaint and the inquiry asserted in his correspondence, it appears petitioner elected to pursue section 1983 relief in lieu of any federal habeas corpus relief. Petitioner has failed to comply with a direct order of the Court to file an amended habeas petition.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by petitioner PAUL JEFFERY CONNALL be DISMISSED for want of prosecution.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and Recommendation to petitioner by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 7th day of October 2009.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the file mark on the first page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).